

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MOHAMED ELSHERBINY,

Plaintiff,

- against -

CITY OF NEW YORK, IVAN CRUZ, AND JOHN OR
JANE DOE 1-10,

NOTICE OF REMOVAL

Case No. 21 Civ. 8022

Law Dept. No.: 2021-002273

Defendants.

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**TO: THE UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK**

Defendant THE CITY OF NEW YORK (hereinafter “the City”), by and through its attorney, Georgia M. Pestana, Corporation Counsel of the City of New York, respectfully shows this Court as follows:

1. On August 23, 2021, Plaintiff, MOHAMED ELSHERBINY, commenced this action by filing a Summons and Complaint in the Supreme Court of the State of New York, County of Kings, under Index No. 811459/2021E, naming the City, IVAN CRUZ, and JOHN AND JANE DOE 1-10¹, as defendants therein, and setting forth the claims for relief upon which the action is allegedly based. See Plaintiff’s Summons and Complaint, annexed hereto as “Exhibit A.”

2. Upon information and belief, the City was electronically served with the Summons and Complaint on August 31, 2021.

3. Upon information and belief, Police Officer IVAN CRUZ was served with the Summons and Complaint at 257 Alexander Avenue, Bronx, NY 11361, on September 13, 2021. See Affidavit of Service, annexed hereto as “Exhibit B.”

¹ Plaintiff has not yet identified JOHN and JANE DOE 1-10 as named Defendants in this matter.

4. The above-captioned action is a civil action of which the United States District Court now has original jurisdiction in that it includes causes of action which arise under the Constitution and laws of the United States, pursuant to 28 U.S.C. § 1331. This action is therefore removable to the United States District Court without regard to the citizenship or residence of the parties.

5. Plaintiff brings this lawsuit pursuant to 42 U.S.C. § 1983 alleging, *inter alia*, federal claims of false arrest, malicious prosecution, excessive force, First Amendment retaliation, municipal liability, denial of equal protection, conspiracy to interfere with civil rights, and denial of the right to a fair trial, all in violation of the First, Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution. See Ex. A. Plaintiff also asserts state law claims for negligence, intentional infliction of emotional distress, assault, battery, false arrest, false imprisonment, and malicious prosecution. See id.

6. Defendant Police Officer IVAN CRUZ consents to the removal of this action of the United States District Court for the Southern District of New York. A copy of the Consent to Removal Form of Police Officer IVAN CRUZ is annexed hereto as "Exhibit C."

7. This Notice of Removal is timely because it is being filed within thirty (30) days of service on the City of the Summons and Complaint on or about August 31, 2021, and all defendants consent to its removal. See 28 U.S.C. § 1446(b).

8. The City will promptly file a copy of this Notice of Removal with the Clerk of the state court in which the action has been pending.

9. The City is unaware of any previous application for the relief requested herein.

WHEREFORE, the City respectfully requests that the above-captioned action be removed from the Supreme Court of the State of New York, County of Kings, to the United States District Court for the Southern District of New York.

Dated: New York, New York
September 27, 2021

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